Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction and Preliminary Matter

This hearing convened as a result of an application by the Tenants for a Monetary Order for return of double the security deposit and pet damage deposit paid, and recovery of the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of the other's evidence submissions. The Landlord, J.A., testified that the Landlords submitted 17 pages of evidence to the Branch on August 16, 2016 including a copy of the residential tenancy agreement as well as the letter from G.M. to the Landlords. That evidence was not before me during the hearing. The Tenant, M.B. confirmed he received this evidence from the Landlords. During the hearing I provided the Landlords with the fax number for the Branch and advised them that the evidence must be provided by no later than Friday October 14, 2016 failing which I would not consider their evidence. I confirm that on the same day as the hearing, October 11, 2016 the Landlords' evidence was received. I confirm I have reviewed that evidence in making this my Decision as well as all evidence and testimony before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure.* However, I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Are the Tenants entitled to a Monetary Order for return of double the security deposit and pet damage deposit?

2. Should the Tenants recover the filing fee?

3. Are the Landlords entitled to monetary compensation from the Tenants?

4. What should happen with the Tenants' security deposit?

5. Should the Landlords recover the filing fee?

Background and Evidence

M.B. testified that the tenancy began November 1, 2014. Monthly rent was payable in the amount of $1,800.00. The Tenants paid a security deposit in the amount of $900.00 and a pet damage deposit in the amount of $450.00 for a total of $1,350.00 in Deposits paid.

The Tenants vacated the premises on January 1, 2016. M.B. testified that they provided the Landlords with a written notice of the forwarding address to return the security deposit to, and claimed that they did not sign over a portion of the security deposit. M.B. testified that initially the Tenants attempted to provide their forwarding address by text message on January 3, 2016 (a copy of this text message was provided in evidence) and when they were informed that text messages were not acceptable, they sent their forwarding address by letter dated January 26, 2015 (which was erroneously dated 2015 rather than 2016 and incorrectly noted the deposits as being $1,500.00.) A copy of the letter was provided in evidence. A further letter was sent by the Tenants to the Landlords dated February 15, 2016 wherein the date of the January 26, 2015 letter was corrected as well as the amounts paid for the deposits.

M.B. testified that to his knowledge the Landlords did not perform incoming or outgoing condition inspection reports. Introduced in evidence was a copy of text messages between the Tenant M.B. and the Landlord J.Z. wherein M.B. asks J.Z. to “come and do a walk through. The response of the Landlords was that they were not feeling well and that it was “going to have to wait until I feel better”.

J.A. testified on behalf of the Landlords.

J.A. stated that the tenancy was between the Landlord and G.M. who rented the property as a “crew house”. He further stated that J.Z. and J.A. (the Tenants named on the Application for Dispute Resolution) were subtenants of G.M.

J.A. confirmed that the Tenant, G.M., paid a security deposit in the amount of $900.00. J.A. further stated that he had an agreement with G.M. that the Landlords could retain the security deposit and that this agreement was contained in a letter from G.M. to the Landlords. A copy of that letter, simply dated “Dec. 2015” was provided in evidence.

J.A. further testified that he received a pet damage deposit in the amount of $450.00 from M.B. He confirmed he did not return those funds as M.B.’s pet caused significant damage to the rental unit.

The Landlords submitted a copy of the move in condition inspection report dated November 1, 2014.

In reply to the Landlords’ testimony M.B. stated that a tenancy existed. He further testified that he was not aware that the Tenant, G.M., had relinquished the security deposit to the Landlords

at the time he applied for dispute resolution. He stated that they paid the $900.00 deposit to G.M. and expected its return at the end of the tenancy in addition to the $450.00 pet damage deposit.

On the date the hearing reconvened, J.A. continued with his testimony. He confirmed that the $938.66 claimed on his Application related to damage caused by the Tenants' dogs.

Introduced in evidence was a copy of the residential tenancy agreement between the Landlord, J.Z. and G.M. and a company by the name of T. This tenancy agreement indicated that the tenancy began November 1, 2014 and was for a period of six months ending on April 30, 2015. J.A. confirmed that after the expiration of the six months they entered into a further month to month tenancy. J.A. claimed this was a verbal agreement with G.M. only.

J.A. further testified that the agreement with G.M. was that this home would be rented a crew house for G.M.'s employees and it would be up to G.M. who he had living in the house with him and that such persons would be considered "occupants", not tenants.

J.A. stated that when G.M. told him that one of his employees, M.B., had a dog he requested that M.B. pay a pet damage deposit of $450.00, which he did and for which they issued a receipt. J.A. further stated that M.B. agreed that the dog would not be able to run around, would at all times be kept in a kennel while in the house, and that M.B. would clean up after it.

In support of the Landlords' claim, the Landlords submitted copies of receipts for the cost to repair the damage caused by dog totaling $938.60. JJ.A. testified that a landing area at the bottom of the stair case was previously carpeted and significantly damaged by dog urine. He stated that the carpet was 2-3 years old at the time the tenancy began. Further he stated that the carpet was removed and the Landlords decided to install more inexpensive laminate flooring in its stead. The cost of this flooring was $686.33 as evidenced by a receipt provided in evidence. The cost of the trim and the transition strips was $32.25 which is noted on a receipt dated January 8, 2016. A further receipt provided in evidence shows that the cost to remove the carpet and install the laminate flooring was $210.00.

Also introduced in evidence was a copy of the receipt for having new keys cut for the rental unit in the amount of $10.02.

Introduced in evidence was a copy of a letter from G.M. dated "Dec. 2015" wherein G.M. confirmed with the Landlords that they could retain his security deposit.

J.A. stated that he received the Tenants forwarding address when they filed for Dispute Resolution in February of 2016. He further stated that he did not believe that they received the Tenants' forwarding address at any other time.

In response to the Landlords' claims M.B. stated that he attempted to provide the Landlords with his forwarding address on January 26, 2016 as well as February 15, 2016.

The Tenants submit that as the Landlords failed to make an application for dispute resolution within 15 days of receipt of the Tenants forwarding address the pet damage deposit should be doubled.

M.B. stated in response to the Landlords' claim for compensation for the cost of replacing the flooring, and the keys, as follows:

- He requested to participate in a move out condition inspection. Copies of text messages sent by the Tenants show they requested such a move out condition inspection. M.B. stated that he was informed by J.Z. that such an inspection would not be conducted and that they should leave the rental unit unlocked and leave the key on the counter.

- The receipt for the laminate flooring was dated January 4, 2016 which was only three days after the Tenants moved out. M.B. stated that it was not appropriate for the Landlords to simply go ahead with this without bringing the alleged damage to the Tenants' attention and giving them an opportunity to discuss the claim and make amends.

- M.B. further stated that the landing was four feet by six feet which means that only 24 square feet would have been replaced, not 272 square feet as indicated on the Landlords' receipt. Further, M.B. noted that on the receipt the following is noted:

  "LAMINATE – REC ROOM"

  M.B. stated that the rooms in the basement were all concrete, aside from one which had a vinyl flooring.

- The photos submitted by the Landlords are of the carpet once it has been removed. M.B. stated that the previous tenants had a dog and the Landlords had a dog such that the damage could have been caused previously. He further stated the photo of the top of the carpet did not show damage, but the underside does. M.B. further stated that the carpet was not properly installed and there was a large space around the carpet around the wall. He also claimed that the carpet was very old, likely more than 15 years old.

- M.B. further stated that the Landlords' claim that the laminate flooring was cheaper than the carpet is not supported by any comparative evidence.

- M.B. also stated that they received $900.00 from G.M. and this amount should have covered the cost of the keys. Further, M.B. confirmed that the key replacement is not related to his pet in any way.

In reply, J.A. stated that the landing was not as small as the Tenants submitted. He stated that he could not really answer why the receipt was for 272 square feet.

J.A. further stated that the landing "kind of opens into a rec room", and that may be why it is noted as "REC ROOM".

J.A. further stated that the previous tenants did not have a dog, nor did they.

J.A. also noted that the flooring was marked as "good" on the move in condition inspection report. He confirmed that it was in good condition.

In terms of the move out inspection, J.A., stated that they did a walk through with G.M. and that at the time the rental unit appeared okay. He stated that after the smell of the cleaning products wore off they could smell the dog urine.

J.A. confirmed that he receive the Tenants' forwarding address in writing in January and February 2016.

Analysis

Based on the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

I find that a tenancy existed between M.B., K.M. and the Landlords. While G.M. may have been the only name Tenant on the residential tenancy agreement, the Landlords communicated with M.B. and K.M. regarding the tenancy, and accepted a pet damage deposit from them directly. Further, in a letter dated Dec. 2015 the Tenant, G.M., confirms that the Tenant, M.B. remained in occupation after G.M.'s tenancy ended.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find, based on the letter from G.M. to the Landlords, that the Tenant, G.M., agreed the Landlords could retain the security deposit. Accordingly, pursuant to section 38(4)(a) of the *Act,* I find the Landlords are entitled to retain the $900.00 security deposit.

On the other hand, there was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the $450.00 *pet damage deposit*.

Similarly, there was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant

(which I find to have occurred in January of 2016), to retain a portion of the pet damage deposit. In failing to do so, the Landlords have breached section 38 of the Act.

I further find that the Landlords failed to perform a move out condition inspection report in accordance with the *Residential Tenancy Act* and *Residential Tenancy Regulation.* By failing to perform an outgoing condition inspection report the Landlords have also extinguished their right to claim against the pet damage deposit, pursuant to section 36(2) of the *Act*.

The pet damage deposit is held in trust for the Tenants by the Landlords. The Landlords may only keep all or a portion of the pet damage deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the pet damage deposit. Accordingly, I award the Tenant $900.00 representing double the pet damage deposit.

The Landlords submitted that the Tenants' pet caused damage to the rental unit. In support they provide receipts which they claim related to the replacement of the carpet on the landing to the staircase. The amounts claimed in terms of the square footage of flooring replaced and the dollar amount noted on the receipt, as well as the notation regarding the "Rec Room" suggest these receipts related to a larger area than the landing allegedly damaged. I am unable, based on the evidence before me, to determine the amount of the flooring cost which relates to the staircase landing, if in fact the carpet on the landing was damaged as alleged. For these reasons, I dismiss the Landlords' claim for compensation for replacing the flooring on the stair case landing.

Similarly, I dismiss the Landlords' claim for compensation for the cost to replace the keys. The Tenants testified that they returned the keys to the rental unit. The Landlord claimed they did not. Without further evidence, I find the Landlords have failed to prove this loss.

As the Tenants have been substantially successful I also award them recovery of the $100.00 filing fee.

Conclusion

The Tenants are granted a Monetary Order pursuant to sections 38, 67 and 72 of the *Act*, in the amount of **$1,000.00**, comprised of double the pet damage deposit ($450.00), and the $100.00 fee for filing this Application. The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords

fail to comply with this Order, the Order may be filed in the small claims division of the Provincial Court and enforced as an Order of that court.

The Landlords failed to prove their loss and their claim is hereby dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 5, 2017

Residential Tenancy Branch